

**FILED**

**JUN 24 2025** *Ar*

CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MARIO JUAREZ  
66 FRANKLIN STREET, SUITE 300  
OAKLAND, CALIFORNIA 94601  
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**UNITED STATES OF AMERICA DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

**OAKLAND DIVISION**

**CV 25-5280**

Case No.:

**SK**

**MARIO JUAREZ, INDIVIDUALLY AND  
DOING BUSINESS AS VIVA  
ENTERTAINMENT COMPANY,**

**Plaintiff,**

**vs.**

**T-MOBILE USA, INC., DELAWARE  
CORPORATION AND DOES 1 TO 20  
INCLUSIVE AS,**

**Defendant(s)**

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF EX  
PARTE MOTION FOR TEMPORARY  
RESTRAINING ORDER AND ORDER TO  
SHOW CAUSE  
(FEDERAL RULE OF CIVIL  
PROCEDURE 65)**

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4 - Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127 (9th Cir. 2011) (II)

5 - Am. Can Co. v. Mansukhani, 742 F.2d 314 (7th Cir. 1984) (VI.E)

6 - Am. Trucking Ass'ns, Inc. v. City of Los Angeles, 559 F.3d 1046 (9th Cir. 2009) (IV.B)

7 - AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 366 (1999) (III.A)

8 - Bennett v. Medtronic, Inc., 285 F.3d 801 (9th Cir. 2002) (I)

9 - Carroll v. Nakatani, 342 F.3d 934 (9th Cir. 2003) (I)

10 - Cent. Tel. Co. of Va. v. Sprint Commc'ns Co., 715 F.3d 501 (4th Cir. 2013) (III.A)

11 - Chambers v. NASCO, Inc., 501 U.S. 32 (1991) (VII.4)

12 - Disney Enters., Inc. v. VidAngel, Inc., 869 F.3d 848 (9th Cir. 2017) (IV.B)

13 - Doe v. Reed, 561 U.S. 186 (2010) (IV.C)

14 - eBay, Inc. v. Bidder's Edge, 100 F. Supp. 2d 1058 (N.D. Cal. 2000) (IV.A, VII.3)

15 - First Tech. Safety Sys., Inc. v. Depinet, 11 F.3d 641 (6th Cir. 1993) (I)

16 - Global Crossing Telecomms., Inc. v. Metrophones Telecomms., Inc., 550 U.S. 45 (2007)

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18 - Granny Goose Foods, Inc. v. Teamsters, 415 U.S. 423 (1974) (I)

19 - Hart v. Massanari, 266 F.3d 1155 (9th Cir. 2001) (VI.E)

20 - Hillsborough Cnty. v. Automated Med. Labs., Inc., 471 U.S. 707 (1985) (III.E)

21 - In re Cement Antitrust Litig., 688 F.2d 1290 (9th Cir. 1982) (VI.E)

22 - In re Lorillard Tobacco Co., 370 F.3d 982 (9th Cir. 2004) (VI.E)

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- 1 - In re StarNet, Inc., 355 F.3d 634 (7th Cir. 2004) (III.A)
- 2 - Klein v. City of San Clemente, 584 F.3d 1196 (9th Cir. 2009) (V.A)
- 3 - L.A. Mem'l Coliseum Comm'n v. NFL, 634 F.2d 1197 (9th Cir. 1980) (V.C, VII.4)
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- 7 - Pacific Bell v. Pac-West Telecomm, Inc., 325 F.3d 1114 (9th Cir. 2003) (III.E, VII.4)
- 8 - Perfect 10, Inc. v. Google, Inc., 653 F.3d 976 (9th Cir. 2011) (II)
- 9 - Regents of Univ. of Cal. v. Am. Broad. Cos., 747 F.2d 511 (9th Cir. 1984) (IV.B)
- 10 - Rent-A-Center, Inc. v. Canyon Television & Appliance Rental, Inc., 944 F.2d 597 (9th Cir.
- 11 1991) (IV.A, VII.3)
- 12 - Republic of the Philippines v. Marcos, 862 F.2d 1355 (9th Cir. 1988) (II)
- 13 - SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180 (1963) (VI.E)
- 14 - Shell Offshore, Inc. v. Greenpeace, Inc., 709 F.3d 1281 (9th Cir. 2013) (II)
- 15 - Sierra Club v. U.S. Forest Serv., 843 F.2d 1190 (9th Cir. 1988) (II)
- 16 - Small v. Avanti Health Sys., 661 F.3d 1180 (9th Cir. 2011) (IV.A, VI.C)
- 17 - Stormans, Inc. v. Selecky, 586 F.3d 1109 (9th Cir. 2009) (V.B)
- 18 - TC Sys., Inc. v. Town of Colonie, 263 F. Supp. 2d 471 (N.D.N.Y. 2003) (III.A)
- 19 - TransUnion LLC v. Ramirez, 594 U.S. 413 (2021) (VII.7)
- 20 - United States v. W.T. Grant Co., 345 U.S. 629 (1953) (VI.E)
- 21 - Vaden v. Discover Bank, 556 U.S. 49 (2009) (VII.1)
- 22 - Verizon Md., Inc. v. Pub. Serv. Comm'n of Md., 535 U.S. 635 (2002) (III.E, VIII)

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1 - Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7 (2008) (II)

3 **State Case Law**

4 - Aron v. U-Haul Co. of Cal., 143 Cal. App. 4th 796 (2006) (V.C, VII.4)

5 - Burlesci v. Petersen, 68 Cal. App. 4th 1062 (1998) (III.D)

6 - Careau & Co. v. Sec. Pac. Bus. Credit, Inc., 222 Cal. App. 3d 1371 (1990) (III.D)

7 - Cel-Tech Commc'ns, Inc. v. L.A. Cellular Tel. Co., 20 Cal. 4th 163 (1999) (III.D, VI.E)

8 - Della Penna v. Toyota Motor Sales, U.S.A., Inc., 11 Cal. 4th 376 (1995) (III.D)

9 - Kasky v. Nike, Inc., 27 Cal. 4th 939 (2002) (III.D, VI.C)

10 - Lectordryer v. SeoulBank, 77 Cal. App. 4th 723 (2000) (III.D)

11 - Meyer v. Sprint Spectrum L.P., 45 Cal. 4th 634 (2009) (III.D)

12 - People v. Glaze, 27 Cal. 3d 841 (1980) (III.D)

13 - People v. Pac. Bell Tel. Co., 127 Cal. App. 4th 1107 (2005) (III.D, VI.D)

14 - People v. Uber Techs., Inc., 56 Cal. App. 5th 266 (2020) (IV.C, VI.C)

15 - S. Cal. Edison Co. v. Peevey, 31 Cal. 4th 781 (2003) (III.D)

16 - Turner v. Pac. Bell Tel. Co., 2007 WL 152105 (N.D. Cal. Jan. 17, 2007) (III.D)

17 - Wolf v. Wells Fargo Bank, N.A., 2011 WL 4831208 (N.D. Cal. Oct. 12, 2011) (VII.9)

19 **Other Authorities**

20 - FCC 19-103, 34 FCC Rcd 10578 (2019): T-Mobile/Sprint merger (III.B, VI.B)

21 - In re Numbering Policies, 30 FCC Rcd 6839 (2015) (III.A, III.C)

22 - In re Telephone Number Portability, 18 FCC Rcd 23697 (2003) (III.A, VII.2)

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1 - In re Verizon Comm'ns Inc., 24 FCC Rcd 14884 (2009) (III.A, VII.2)

3 **I. Introduction and Overview**

4 This is not a mere billing dispute; it is a stand for justice against T-Mobile USA, Inc., a telecom  
5 giant unlawfully withholding Plaintiff Mario Juarez's phone numbers—the lifeline of his  
6 business, identity, and safety—over a disputed \$29,265.37 debt. Plaintiff acknowledges T-  
7 Mobile's right to pursue the debt legally but seeks to enforce his federal right to port his numbers  
8 tied to account 949-864-937, which T-Mobile's refusal threatens to erase by July 12, 2025,  
9 exploiting the Federal Communications Commission's 45-day rule (47 C.F.R. § 52.15(f)(1)(ii)).  
10 This deliberate defiance violates 47 C.F.R. § 52.35(b)(1) and 47 U.S.C. § 251(b)(2), echoing  
11 Sprint's porting abuses post their April 1, 2020 merger (FCC 19-103, 34 FCC Rcd 10578  
12 (2019)). T-Mobile's continued refusal despite Plaintiff's extensive notice efforts (Exhibit C)  
13 risks mooted relief, necessitating ex parte action.

14  
15 Plaintiff, a sole proprietor, emailed over fifteen T-Mobile staff and made multiple phone calls  
16 from May 28 to June 19, 2025, citing federal law (Exhibit D), offered \$5,000 upfront with  
17 biweekly payments (Exhibit B), and faced a demand for full payment (Exhibits A, C). These  
18 numbers, critical for banking (Provident Credit Union, Bank of Montreal), government portals  
19 (SAM.gov, PAY.gov, IRS.gov), client trust, and FBI/DOJ whistleblower lines protecting  
20 Plaintiff as a survivor of two attempted murders, are his lifeline, now causing business losses and  
21 safety risks. Plaintiff seeks no monetary damages now, only compliance with the 24 counts in the  
22 Verified Complaint, reserving rights to a jury trial, damages, and class certification under Federal

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Rule of Civil Procedure 23. T-Mobile's systemic tactics threaten millions, demanding a \*\*Temporary Restraining Order (TRO)\*\*, \*\*Order to Show Cause (OSC)\*\*, and \*\*published opinion\*\* to enforce 47 U.S.C. § 207 and 28 U.S.C. § 2201.

**A. Disputed Phone Numbers**

The following phone numbers, among others under T-Mobile account 949-864-937, are in dispute and must be ported:

- (510) 821-6699

- (510) 944-7744

- (510) 736-8080

- (510) 901-9090

- (209) 640-1111

- (702) 515-9797

- (619) 943-0202

- (510) 641-7733

- (510) 641-7711

- (510) 828-5806

These numbers are vital for Plaintiff's business, banking, government access, and safety.

**II. Legal Standard for Temporary Restraining Order and Preliminary Injunction**

A TRO and Preliminary Injunction under FRCP 65(b) require: (1) likelihood of success on the merits; (2) irreparable harm absent relief; (3) balance of equities favoring Plaintiff; and (4) public

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1 interest supporting an injunction. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20  
2 (2008). The Ninth Circuit’s sliding scale permits relief with serious questions on the merits and a  
3 sharp tilt in equities. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131–35 (9th Cir.  
4 2011). For an **\*\*OSC\*\***, a fair chance of success and significant harm suffice. *Republic of the*  
5 *Philippines v. Marcos*, 862 F.2d 1355, 1362 (9th Cir. 1988).

### 6 7 **III. Likelihood of Success on the Merits**

8 Plaintiff’s 24 causes of action in the Verified Complaint establish a strong likelihood of success

#### 9 **A. Defendant’s Refusal Violates Federal Law**

10 T-Mobile’s June 17, 2025, refusal (Exhibit C) demanding \$29,265.37 violates 47 C.F.R. §  
11 52.35(b)(1), prohibiting porting conditions, and 47 U.S.C. § 251(b)(2), mandating portability.  
12 *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 378 (1999); *Cent. Tel. Co. of Va. v. Sprint*  
13 *Commc’ns Co.*, 715 F.3d 501, 509 (4th Cir. 2013). T-Mobile’s actions also violate 47 U.S.C. §§  
14 201(b), 202(a), 203(c), enforceable via 47 U.S.C. § 207. *Global Crossing Telecomms., Inc. v.*  
15 *Metrophones Telecomms., Inc.*, 550 U.S. 45, 53 (2007).

#### 16 **B. T-Mobile’s Willful Repetition of Regulatory Conduct**

17 As Sprint’s successor (FCC 19-103, 34 FCC Rcd 10578 (2019)), T-Mobile persists in porting  
18 abuses, as shown by Exhibits C and D, consistent with the Verified Complaint’s Section IV.B.  
19 *Chambers v. NASCO, Inc.*, 501 U.S. 32, 45 (1991).

#### 20 **C. Plaintiff’s Compliance and Good Faith**

1 Plaintiff provided account details (PIN [Redacted], EIN [Redacted]) and offered \$5,000 upfront  
2 with biweekly payments (Exhibit B), yet T-Mobile refused (Exhibit D). L.A. Mem'l Coliseum  
3 Comm'n v. NFL, 634 F.2d 1197, 1200 (9th Cir. 1980).

#### 4 **D. State Law Violations**

5 T-Mobile violates Cal. Pub. Util. Code §§ 451, 710, 2890(d); Cal. Civ. Code § 1770(a)(5), (19);  
6 Cal. Bus. & Prof. Code §§ 17200, 17500; Cal. Const. Art. I, §§ 1, 7; and common law torts  
7 (counts 21–24). S. Cal. Edison Co. v. Peevey, 31 Cal. 4th 781, 792 (2003); Cel-Tech Commc'ns,  
8 Inc. v. L.A. Cellular Tel. Co., 20 Cal. 4th 163, 180 (1999); Della Penna v. Toyota Motor Sales,  
9 U.S.A., Inc., 11 Cal. 4th 376, 392 (1995); Burlesci v. Petersen, 68 Cal. App. 4th 1062, 1066  
10 (1998); Careau & Co. v. Sec. Pac. Bus. Credit, Inc., 222 Cal. App. 3d 1371, 1393 (1990);  
11 Lectordryer v. SeoulBank, 77 Cal. App. 4th 723, 726 (2000).

#### 12 **E. Supremacy Clause Preemption**

13 T-Mobile's contractual defenses are void under the Supremacy Clause. U.S. Const. Art. VI, Cl.  
14 2; Verizon Md., Inc. v. Pub. Serv. Comm'n of Md., 535 U.S. 635, 642 (2002).

#### 15 **IV. Irreparable Harm**

##### 16 **A. Loss of Business Numbers as Irreparable Harm**

17 Loss of numbers, tied to 15 years of branding, banking, and government access, is irreparable,  
18 causing loss of client contracts worth thousands monthly and severed vendor relationships, as  
19 detailed in the Verified Complaint's Section IV.A.2. eBay, Inc. v. Bidder's Edge, 100 F. Supp.  
20 2d 1058, 1066 (N.D. Cal. 2000); McNeary-Calloway v. JP Morgan Chase Bank, N.A., 863 F.  
21 Supp. 2d 928, 947 (N.D. Cal. 2012).

**B. 45-Day FCC Aging Rule: A Ticking Time Bomb**

The FCC's 45-day rule (47 C.F.R. § 52.15(f)(1)(ii)) risks reassignment by July 12, 2025. Regents of Univ. of Cal. v. Am. Broad. Cos., 747 F.2d 511, 520 (9th Cir. 1984).

**C. Public Safety Peril**

Numbers linked to FBI/DOJ whistleblower lines are critical for Plaintiff's safety, per the Verified Complaint's Section IV.A.5. Small v. Avanti Health Sys., 661 F.3d 1180, 1197 (9th Cir. 2011).

**D. No Monetary Cure**

Damages cannot restore client trust or safety. eBay, 100 F. Supp. 2d at 1066.

**V. Balance of Equities Strongly Favors Plaintiff****A. Plaintiff's Catastrophic Loss**

Without relief, Plaintiff faces ruin, per the Verified Complaint's Section IV.A. Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1135 (9th Cir. 2011).

**B. T-Mobile's Zero Burden**

T-Mobile retains debt collection rights. Stormans, Inc. v. Selecky, 586 F.3d 1109, 1138 (9th Cir. 2009).

**C. Self-Inflicted Wound**

T-Mobile's refusal despite Plaintiff's notices (Exhibits B–D) is self-inflicted. L.A. Mem'l Coliseum Comm'n v. NFL, 634 F.2d 1197, 1200 (9th Cir. 1980).

**D. Precedent Demands Action**

Courts reject infrastructure coercion. eBay, 100 F. Supp. 2d at 1066.

## **VI. Public Interest and Systemic Abuse Analysis**

### **A. FCC Rules Safeguard the Public**

47 C.F.R. § 52.35 and 47 U.S.C. § 251(b)(2) protect consumer choice. *Nken v. Holder*, 556 U.S. 418, 436 (2009).

### **B. Inherited Profit Motive**

T-Mobile's tactics, inherited from Sprint (FCC 19-103, 34 FCC Rcd 10578 (2019)), profit from porting abuses, per the Verified Complaint's Section IV.B.

### **C. National "Ticking Time Bomb"**

T-Mobile's 45-day rule exploitation, enabled by their dominance post-Sprint merger, threatens millions, as Sprint faced similar FCC scrutiny for porting violations. *Small v. Avanti Health Sys.*, 661 F.3d 1180, 1197 (9th Cir. 2011).

### **D. Public Safety Imperative**

Plaintiff's whistleblower lines underscore the stakes. *People v. Pac. Bell Tel. Co.*, 127 Cal. App. 4th 1107, 1114 (2005).

### **E. Published Opinion as a Shield**

A published opinion under 28 U.S.C. § 1292(a)(1), as sought in the Verified Complaint's Section VII.A, will deter carriers by clarifying 47 C.F.R. § 52.35's prohibition on porting conditions, protecting millions from identity loss. This is warranted for recurring violations and where FCC mediation delays fail, per the Verified Complaint's Section IV.A.9. *In re Cement Antitrust Litig.*, 688 F.2d 1290, 1302 (9th Cir. 1982); *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953); *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195 (1963).

## **F. Class Potential**

This pattern may support FRCP 23 certification, reserved herein.

## **VII. Anticipated Defenses and Rebuttals**

1. Arbitration and Contract Defenses Invalid: T-Mobile's arbitration clauses and contractual defenses are nullified by 47 U.S.C. § 207 (all counts). *Vaden v. Discover Bank*, 556 U.S. 49, 62 (2009).

2. Account Hold Unlawful: T-Mobile's hold violates 47 C.F.R. § 52.35(b)(1) (Counts 1–4, 15–17). *In re Telephone Number Portability*, 18 FCC Rcd 23697, 23702 (2003).

3. Irreparable Harm Established: Plaintiff's losses are **\*\*irreparable\*\*** (all counts). *eBay, Inc. v. Bidder's Edge*, 100 F. Supp. 2d 1058, 1066 (N.D. Cal. 2000).

4. State Law Claims Not Preempted: Counts 7–14, 20–24 are not preempted. *Pacific Bell v. Pacific West Telecomm, Inc.*, 325 F.3d 1114, 1125 (9th Cir. 2003).

5. Private Right of Action Exists: 47 U.S.C. § 207 allows claims under §§ 202(a), 203(c) (Counts 18–19). *Global Crossing Telecomms., Inc. v. Metrophones Telecomms., Inc.*, 550 U.S. 45, 53 (2007).

6. Tort Claims Sufficiently Specific: Counts 21–23 meet FRCP 8(a) (Verified Complaint Sections IV.A.2, IV.A.5, IV.A.6). *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

7. Article III Standing Established: Plaintiff's injuries establish standing (all counts). *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021).

8. Primary Jurisdiction Inapplicable: 47 U.S.C. § 207 precludes FCC deferral (Counts 1–6, 15–19). *Global Crossing Telecomms., Inc. v. Metrophones Telecomms., Inc.*, 550 U.S. 45, 53 (2007)

9. Unjust Enrichment Not Duplicative: Count 24 is pled in the alternative, permissible under FRCP 8(d)(2). *Wolf v. Wells Fargo Bank, N.A.*, 2011 WL 4831208, at \*8 (N.D. Cal. Oct. 12, 2011).

#### **VIII. Jurisdictional Bases**

- 28 U.S.C. § 1331: Federal question jurisdiction for 47 U.S.C. §§ 201(b), 202(a), 203(c), 251(b)(2). *Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 642 (2002).

- 47 U.S.C. § 207: Private right of action.

- 28 U.S.C. § 2201: Declaratory relief.

- 28 U.S.C. § 1367: Supplemental jurisdiction.

- 28 U.S.C. § 1391: Venue in Alameda County.

#### **IX. Prayer for Relief**

Plaintiff respectfully requests:

1. A Temporary Restraining Order enjoining T-Mobile from refusing to port, conditioning on payment, disconnecting, or delaying numbers on account 949-864-937, per FRCP 65.

2. An Order to Show Cause within 14 days for a Preliminary Injunction.

3. A Preliminary Injunction ordering porting and preservation.

4. A Declaratory Judgment under 28 U.S.C. § 2201 declaring T-Mobile's refusal unlawful.

5. Preservation Orders barring aging/reassignment for 90 days and requiring record retention.

1 6. A published opinion under 28 U.S.C. § 1292(a)(1) to deter abuse and clarify federal  
2 law.

3 7. Referral of T-Mobile's conduct to the FCC, CPUC, California Attorney General, U.S.  
4 Attorney's Office, and SEC for investigation of Telecommunications Act breaches,  
5 consumer protection violations, and potential false merger statements.

6 8. Reservation of rights for class certification (FRCP 23), jury trial (FRCP 38), and  
7 damages (FRCP 15).

8 9. Further relief as just, per 47 U.S.C. § 401(b).

9  
10 Dated: June 24, 2025

11   
/s/ **Mario Juarez**

12 Mario Juarez, Pro Se  
13 66 Franklin Street, Suite 300  
14 Oakland, CA 94607  
[mario@mariojuarez.co]

15 **Certificate of Service**

16 I, Mario Juarez, certify under penalty of perjury that on June 24, 2025, I will serve a true copy of  
17 this Memorandum of Points and Authorities, along with accompanying documents, on T-Mobile  
18 USA, Inc., via personal service to CSC - Lawyers Incorporating Service, 2710 Gateway Oaks  
19 Drive, Suite 150N, Sacramento, CA 95833, per FRCP 4(h)(1)(B), with courtesy copies mailed to  
20 12920 SE 38th Street, Bellevue, WA 98006, and emailed to legalnotices@t-mobile.com, per  
21 Civil L.R. 5-5(a).

22 /s/ **Mario Juarez**

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